

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

CPV KEENAN II RENEWABLE )  
ENERGY COMPANY, LLC )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. CIV-13-795-D  
 )  
 OKLAHOMA GAS AND ELECTRIC )  
 COMPANY, )  
 )  
 Defendant. )

**FIRST AMENDED COMPLAINT**

Plaintiff CPV Keenan II Renewable Energy Company, LLC ("CPV") for its claims against Defendant Oklahoma Gas and Electric Company, LLC ("OG&E") states as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff CPV is a Delaware limited liability company with its principal place of business in Silver Spring, Maryland. The owner members of CPV are Delaware limited liability companies, CPV Renewable Energy Company, LLC ("CPV Renewable"), EFS Keenan II, LLC ("EFS"), and Tyr Keenan, LLC ("Tyr"). The owner member of CPV Renewable is CPV Renewable Energy Company, Inc., a Delaware corporation with its principal place of business in Maryland. The owner member of EFS is GE Energy Financial Services, Inc., a Delaware corporation with its principal place of business in Connecticut. The owner member of Tyr is ITOCHU International, Inc., a Delaware corporation with its principal place of business in New York.

2. Defendant OG&E is an Oklahoma corporation with its principal place of business in Oklahoma City, Oklahoma.

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(1), as this action is between citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

4. Venue is proper under 28 U.S.C. § 1391(b), as a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

#### **BACKGROUND**

5. This case arises from OG&E's failure to comply with the terms of the Wind Energy Purchase Agreement (the "Agreement") to which it and CPV are parties.

6. CPV owns and operates a wind farm in Woodward County, Oklahoma (the "Keenan Wind Farm"). Prior to constructing the farm, CPV entered into the Agreement with OG&E, whereby CPV would sell and OG&E would purchase electrical energy generated by the farm.

7. Under the Agreement, CPV submits a monthly invoice to OG&E detailing the energy provided to OG&E and the amounts owed to CPV. Pursuant to the Agreement, should OG&E dispute the amount set forth in the invoice, it is required to pay the full amount set forth in the invoice and then seek in good faith to resolve the dispute in accordance with procedures set forth in the Agreement.

8. Under certain circumstances described in the Agreement, OG&E must pay CPV for power that CPV does not deliver to OG&E because the delivery of such power

is curtailed. The amounts owed for this curtailment energy are included in CPV's monthly invoices to OG&E.

#### **OG&E'S BREACH OF THE AGREEMENT**

9. On multiple occasions since the Keenan Wind Farm began commercial operations in October 2010, OG&E has failed to take the actions required under the Agreement including making the specified payments for curtailment energy.

10. The amounts owed to CPV by OG&E under the Agreement that have not been paid exceed \$75,000.00.

11. CPV has sought to resolve this dispute through the procedures specified in the Agreement. These efforts have been unsuccessful.

#### **COUNT I (BREACH OF CONTRACT)**

12. Plaintiff realleges and incorporates by reference the paragraphs of this Complaint not specifically contained in this section.

13. Defendant has breached the Agreement by failing to take the actions required under the Agreement, including making the payments for curtailment energy due under that Agreement.

14. For the reasons stated above, Plaintiff requests full equitable and legal relief including compensatory and such other damages available by law, costs, and attorney's fees.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the Court to grant it all relief available by law, including: (a) compensatory damages; (b) interest; (c) injunctive and declaratory relief, (d) an award of costs incurred by Plaintiff in bringing this action; (e) an award of attorney's fees incurred by Plaintiff in bringing this action; and (f) any such further relief as this Court may deem just and proper.

**JURY TRIAL DEMANDED.**

Respectfully submitted,

s/Mack J. Morgan III  
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**ATTORNEYS FOR PLAINTIFF CPV  
KEENAN II RENEWABLE ENERGY  
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